

**MMB UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH DiGENOVA

BANQUET SERVER ON CALL

**15 4143**

(In the space above enter the full name(s) of the plaintiff(s).)

- against -

UNITE HERE LOCAL 274

**COMPLAINT**

Jury Trial:  Yes  No

(check one)

PHILA SOINT BOARD /  
PREVIOUS UNITE HERE LOCAC  
274

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

**I. Parties in this complaint:**

A. List your name, address and telephone number. If you are presently in custody, include your identification number and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff	Name	<u>JOSEPH DiGENOVA</u>
	Street Address	<u>827 S 49TH ST</u>
	County, City	<u>PHILA</u>
	State & Zip Code	<u>PA 19143</u>
	Telephone Number	<u>215-280-2542</u>

**NOTE:** In order to bring suit in federal district court under the Pennsylvania Human Relations Act, you must first file a complaint with the Pennsylvania Human Relations Commission or the Philadelphia Commission on Human Relations, and then you must wait one year prior to filing a lawsuit.

**I. Parties in this complaint:**

A. List your name, address and telephone number. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name: JOSEPH J GENOVA  
Street Address: 827 S 49TH ST  
County, City: PHILA PA  
State & Zip: 19143  
Telephone Number: 215-280-2542

B. List all defendants' names and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the caption on the first page. Attach additional sheets of paper as necessary.

Defendant Name: UNITE HERE LOCAL 274 SINCE OCT 1, 2016  
Street Address: 421 N 7TH ST SUITE 400  
County, City: PHILA PA 19123  
State & Zip: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

C. The ~~address~~ at which I sought employment or was employed by the defendant(s) is:

Employer: PHILA JOINT BOARD  
Street Address: 22 S. 22ND ST  
County, City: PHILA  
State & Zip: PA 19103  
Telephone Number: 215-751-9770

**II. Statement of the Claim**

A. The discriminatory conduct of which I complain in this action includes (*check only those that apply to your case*):

Failure to hire me  
 Termination of my employment  
 Failure to promote me

Failure to reasonably accommodate my disability  
 Failure to reasonably accommodate my religion  
 Failure to stop harassment  
 Unequal terms and conditions of my employment  
 Retaliation  
 Other (specify): NO REPRESENTATION OF BANQ SERVERS ON CALL

**NOTE:** Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

B. It is my best recollection that the alleged discriminatory acts occurred or began on or about: (month) DEC., (day) 21, (year) 2010.

C. I believe that the defendant(s) (check one):

is still committing these acts against me.  
 is **not** still committing these acts against me.

D. Defendant(s) discriminated against me based on my (*check only those that apply and state the basis for discrimination, for example, what is your religion, if religious discrimination is alleged*):

race \_\_\_\_\_  color \_\_\_\_\_

religion \_\_\_\_\_  gender/sex \_\_\_\_\_

national origin \_\_\_\_\_

age My date of birth is 5/30/56 (Give your date of birth only if you are asserting a claim of age discrimination)

E. The facts of my case are as follow (attach additional sheets of paper as necessary):

ON OCT 1, 2010, PHILA JOINT BOARD WAS REMOVED FROM REPRESENTATION OF BANQUET SERVERS AT HOTELS. PHILA JOINT BOARD ALLOWED FRAUDULENT PREFERRED LIST AT HOLIDAY INN INDEPENDENCE TO BE PUT INTO EFFECT WITH OUT KNOWLEDGE OF 2 MEMBERS, WHO DID NOT RECEIVE WORK. UNITE HERE WITH LIST FROM BANQ. SERVERS A LIST, WHO DID NOT FIND OUT UNTIL I DISCOVERED AT UNION HALL AND REPORTED INCIDENT TO US ATTORNEY AND DEPT OF LABOR, FRAUD AND RACKETEERING, AT SAME TIME FOUND OUT TIM O'TOOLE WAS TOLD BY PHILA JOINT BOARD NOT TO REPRESENT BANQ. SERVERS ON CALL.

-3-  
CONTINUED

## PAGE 3 CONTINUED

AFTER REMOVAC, PHICA JOINT BOARD WROTE LETTER TO HOTELS & US TELLING THEM TO CALL BANQUET SERVERS EXTRA DIRECT. THIS INDUCED BREACH OF CONTRACT AND INTERFERENCE WITH EMPLOYMENT. THE HIRING HALL RULES MADE BY PHICA, JOINT BOARD / UNITE HERE LOCAL 274, WHICH WERE PUT INTO PLACE WITH PROTEST BY MEMBERSHIP, WERE NEVER FOLLOWED. THIS IS WHY I CAME TO COURT WITH CHARGES AGAINST MARGE MCBAUDE BOOKING AGENT IN CV 13-3787, WHICH COURT FOUND CONFUS I HAVE HAD DIMINISHED EARNING AND NO RETIREMENT THAT I FOUND OUT ABOUT IN 2012. AT THE SAME TIME OF CV 13-3856 WITH RIGHT TO SUE, SHERATON UNIVERSITY CITY HOTEL DID NOT RESPOND TO COURT AT ALL. THERE WAS NO ACTION TAKEN FOR NO RESP BY COURT. THE PREFERRED LIST HIRED CONSISTED OF UNQUALIFIED, HEALTHY FEMALES WHO USE CARTS TO SERVE, WHILE QUALIFIED UNION EXTRAS HAD TO USE TRAYS AND WAIT FOR CARTS TO GO FIRST INTO ROOM. CUSTOMERS PAY A 21% SERVICE CHARGE ADDED TO BILL FOR GOOD SERVICE.

I WANT THIS DISCRIMINATION FIXED.

FEB 25 '15 AM 11:47

Mr. Joseph C DiGenova  
827 S. 49th St..  
Philadelphia, PA 19143

ATT. PINKEY

February 24, 2015

LUCAS

To the Philadelphia Commission on Human Relations and  
Equal Employment Opportunities Commission

215-440-2652

RE:

From

Joseph C. Digenova v. Unite Local 274  
PCHR DOCKET NO. E14126607  
EEOC Charge Number 17G-2015-00065C

M.S. ABEL

To whom it may concern.

I filed my complaint of discrimination based on age. More than 60 days have passed since I filed my complaint. I am requesting a notice of right to sue letter so I can file a case in federal court.

I understand that this will close out my cases with both PCHR and the EEOC.

Respectfully,

Joseph C. DiGenova

Joseph C. DiGenova

RECEIVED

15 MAR 13 AM 9:47

USC PHILADELPHIA  
DISTRICT OFFICE

I REQUEST A SUBSTANTIAL WRITTEN REVIEW ADDITION DUE TO PURGERY BY UNION OFFICIALS

Joseph C. DiGenova

215-280-2542  
3/13/15

Instructions: Make copies of this blank page or attach additional sheets if needed. Briefly state any information not included in your complaint or rebuttal that you believe supports your case. If there are documents or witnesses that support your position, you should submit that information as well; you may use the Supporting Evidence form.

**POSITION STATEMENT**

RECEIVED  
U.S. DISTRICT COURT  
PHILADELPHIA  
APR -7 PM 1:01  
STRICT OFFICE

I HAVE CONSISTANTLY LOST WORK - UNDER MY RIGHT AS MEMBER OF A LIST. DUE TO MY WORK BEING GIVEN TO PREVIOUS BOOKING AGENT'S CHILDREN KATE & FRANCIS SCHINGEN WHO ARE UNDER AGE 40, SINCE 2009, OF MY KNOWLEDGE. MIKE MULLENS IS RUNNING FOR OFFICE AGAIN RIGHT NOW, AS IS CATHRINE CRISTIANI - VICE PRESIDENT WHO LIED ABOUT POLICE INVOLVEMENT AT UNITE

Joseph DiGenova  
HERE

In January, 2009 we went to Federal Court for this gross misrepresentation. We returned to Federal Court to seek legal correction the day after surgery in this matter. The Union is hired by employees with various contracts to protect their interest at their jobs and to receive proper and just representation, they pay dues to maintain this representation and to manage healthcare and pensions in good faith for it's members. We were in touch with Mr. Edgar Romney, trustee for Local 274 and International vice president in the years 2006-2008.

We tried to resolve our problems with a number of contracts for booking our work. It yielded no results: Promises of structure and resolution of practice. It was a correction that never took place, as promised.

We have been locked out of our union hall for banquet scheduling since February, 2007. The vote was about the split UNITE here and The Joint Board, which was tampered by Union and false votes cast.

The Philadelphia Cafeteria Workers left the Joint Board in October, 2009 for misrepresentation of over 2,400 members under President Ms. Doris Smith.

We do not want the following people to represent our interests or pay their salaries from our union dues: Ms. Lynn Fox, Mr. Charles Murphy, Mr. Michael Drapper, Ms. Shirley SCHIGAN, GINA WILSON, SANDY MATOS, RICHARD MINTER

Our Union representatives have been paid over \$300,000.00 of member dues per year. We have been misrepresented for (5) years. We are looking to Judge Davis to find in favor of the plaintiffs in the filed civil suit as the burden of proof is fully upon them in this matter.

I want my name (Mr. Joseph DiGenova) to be cleared of this misrepresentation and for \$850,000.00 in damages (to qualified members) be awarded our membership.

Plus \$100,000.00 representing lost wages to Mr. Joe DiGenova.

I look forward to hearing from you at your very earliest convenience.

Mr. Joseph DiGenova

*Joseph DiGenova*

A List Representative:

1) Catherine Grimaldi Catherine Grimaldi  
Print Name Signature

2) Steve Zumbiel Steve Zumbiel  
Print Name Signature

3) Robert F Powell Jr Robert F Powell Jr  
Print Name Signature

4) Ed Gordon Ed Gordon  
Print Name Signature

5) Ray William Ray William  
Print Name Signature

6) Helen Hart Helen Hart  
Print Name Signature

7) ARTHUR H DAVIS Arthur H. Davis  
Print Name Signature

8) Julio D Castillo Julio Castillo  
Print Name Signature

FROM COMPLAINT OF 7/20/10

**NOTE:** As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, the Pennsylvania Human Relations Commission, or the Philadelphia Commission on Human Relations.

**III. Exhaustion of Administrative Remedies:**

A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on: DEC 2015 (Date).

B. The Equal Employment Opportunity Commission (check one):

has not issued a Notice of Right to Sue Letter.  
 issued a Notice of Right to Sue Letter, which I received on 6/2/15 (Date).

**NOTE:** Attach to this complaint a copy of the Notice of Right to Sue Letter from the Equal Employment Opportunity Commission.

C. Only plaintiffs alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one):

60 days or more have passed.  
 fewer than 60 days have passed.

D. It is my best recollection that I filed a charge with the Pennsylvania Human Relations Commission or the Philadelphia Commission on Human Relations regarding the defendant's alleged discriminatory conduct on: \_\_\_\_\_ (Date).

E. Since filing my charge of discrimination with the Pennsylvania Human Relations Commission or the Philadelphia Commission on Human Relations regarding the defendant's alleged discriminatory conduct (check one):

One year or more has passed.  
 Less than one year has passed.

#### IV. Relief

**WHEREFORE**, Plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, and costs as well as (*check only those that apply*):

- Direct the defendant to hire the plaintiff.
- Direct the defendant to re-employ the plaintiff.
- Direct the defendant to promote the plaintiff.
- Direct the defendant to reasonably accommodate the plaintiff's disabilities.
- Direct the defendant to reasonably accommodate the plaintiff's religion.
- Direct the defendant to (*specify*): \_\_\_\_\_
- If available, grant the plaintiff appropriate injunctive relief, lost wages, liquidated/double damages, front pay, compensatory damages, punitive damages, prejudgment interest, post-judgment interest, and costs, including reasonable attorney fees and expert witness fees.
- Other (*specify*): \$ 70000 WAGES, MENTAL DURESS FROM FALSE STATEMENTS & SWEARING TO COURT, COMMISSION

I declare under penalty of perjury that the foregoing is true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature of Plaintiff  
Address

Joseph DiGenova  
827 S 49TH ST

Telephone number

PHILA PA 19143

Fax number (*if you have one*)

215-280-2542

**Settlement Checklist**PCHR CHARGE NO. E14126607EEOC CHARGE NO. 17G-2015-00065C1. I have lost the following MONEY AND/OR BENEFITS *because of discrimination*:

	Amount (\$) Lost/Paid
<input checked="" type="checkbox"/> Wages	_____
<input type="checkbox"/> Health insurance	_____
<input checked="" type="checkbox"/> Pension and retirement benefits	_____
<input type="checkbox"/> Unused vacation days	_____
<input type="checkbox"/> Life insurance	_____
<input type="checkbox"/> Sick pay	_____
<input type="checkbox"/> Other: _____	_____

2. I have lost the following JOB OPPORTUNITIES *because of discrimination*:

- A higher paying job than I have now (demotion, non-hire, unequal pay)
- My job entirely (termination)
- A better job title than I have now (demotion, non-hire)
- Opportunity to transfer to another location
- Job security, because I got a bad evaluation or discipline
- Ability to work without experiencing the type of harassment alleged in my complaint
- Changes to my job that I need for my disability or religion
- Future employment, because it will be hard for me to get hired with a termination record

3. I want the following CHANGES AT RESPONDENT made *because of discrimination*:

- New policies on discrimination
- Staff training on discrimination issues
- My alleged harasser transferred to another location or disciplined in some way
- To be transferred to another location away from my harasser
- Other: \_\_\_\_\_

4. I want Respondent to give me an APOLOGY/ ACKNOWLEDGEMENT OF WRONGDOING *because of discrimination*:

- Yes
- No

5. I want the following OTHER RELIEF *because of discrimination*:

SERVICE TRAINING WITH PARTICIPATION BY HOTELS  
& UNION FOR EQUAL-SMOOTH-QUALITY SERVICE TO  
BE EXPERIENCED BY CUSTOMER WHO PAYS OVER 50%  
OF PAY TO SERVER

NEW LAW - LILLY LEDBETTER      EQUAL PAY  
 EQUAL WORK

**Settlement Checklist**PCHR CHARGE NO. E14126607EEOC CHARGE NO. 17G-2015-00065C

6. I would like Respondent to provide the following as settlement for my complaint (check all that apply):

Money and/or employment benefits that I lost because of discrimination.  
 Job opportunities.  
 Changes at Respondent.  
 Acknowledgement of wrongdoing/apology.  
 Other (explain): \_\_\_\_\_

7. Of the items I checked above, the **MOST** important to me is:

Money and/or benefits that I lost because of discrimination.  
 Job opportunities.  
 Changes at Respondent.  
 Acknowledgement of wrongdoing/apology.  
 Other (explain): \_\_\_\_\_

8. Of the items I checked above, the **SECOND MOST** important to me is:

Money and/or benefits that I lost because of discrimination.  
 Job opportunities.  
 Changes at Respondent.  
 Acknowledgement of wrongdoing/apology.  
 Other (explain): \_\_\_\_\_

9. Of the items I checked above, the **LEAST** important to me is:

Money and/or benefits that I lost because of discrimination.  
 Job opportunities.  
 Changes at Respondent.  
 Acknowledgement of wrongdoing/apology.  
 Other (explain): \_\_\_\_\_

10. Do you have a job?  Yes (answer questions 11-13)  No (skip to questions 14-16)

11. Are you working at Respondent?  Yes  No

12. When did you start working at your current job?

4/1/82

13. What is your current salary

\$ 10.40 + 15% per month

14. Are you receiving unemployment insurance?

Yes  No

15. When did you receive your first unemployment check? N/A

1/1/

***For failure to hire/failure to promote cases only:***

16. What is the salary of the job you wanted?

\$ \_\_\_\_\_ per month

**DISMISSAL AND NOTICE OF RIGHTS**

To: Joseph DiGenova  
827 S. 49th Street  
Phila, PA 19143

From: Philadelphia District Office  
801 Market Street  
Suite 1300  
Philadelphia, PA 19107



*On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

17G-2015-00065

P M. Lucas,  
Investigator

(215) 440-2652

**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)      You have filed a lawsuit in State & Local Court based on the issues raised in your charge.

**- NOTICE OF SUIT RIGHTS -**  
*(See the additional information attached to this form.)*

**Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible**.

On behalf of the Commission

June 2, 2015

(Date Mailed)

Enclosures(s)

Spencer H. Lewis, Jr.,  
District Director

cc: UNITE HERE LOCAL 274

Mark Featherman, Esq.  
Willig, Williams & Davidson  
1845 Walnut Street, 24<sup>th</sup> Floor  
Philadelphia, PA 19103

SOCIAL SECURITY ADMINISTRATION

Date: April 3, 2015  
Claim Number: XXX-XX-3845A  
XXX-XX-3845DI

JOSEPH C DIGENOVA  
827 S 49TH ST  
PHILADELPHIA PA 19143-3339

You asked us for information from your record. The information that you requested is shown below. If you want anyone else to have this information, you may send them this letter.

Information About Current Social Security Benefits

Beginning December 2014, the full monthly Social Security benefit before any deductions is.....\$ 991.80

We deduct \$0.00 for medical insurance premiums each month.

The regular monthly Social Security payment is.....\$ 991.00  
(We must round down to the whole dollar.)

Social Security benefits for a given month are paid the following month. (For example, Social Security benefits for March are paid in April.)

Your Social Security benefits are paid on or about the third of each month.

Date of Birth Information

The date of birth shown on our records is May 30, 1956.

Type of Social Security Benefit Information

You are entitled to monthly disability benefits.

SUSPECT SOCIAL SECURITY FRAUD?

Please visit <http://oig.ssa.gov/r> or call the Inspector General's Fraud Hotline at 1-800-269-0271 (TTY 1-866-501-2101).

# UNITE HERE Is Our Union!

COURT PAGE  
*iUNITE HERE es nuestra unión!*  
3



As of Friday, October 1, 2010, the Philadelphia Joint Board is out of your hotel and UNITE HERE is now clearly in as your union. All of the members who work in union hotels in Philadelphia are part of UNITE HERE.

**We will stand together to build a stronger union.**

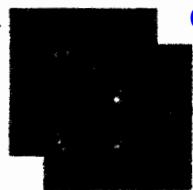
**We will stand together for justice.**

*Desde el viernes, el 1 de octubre, el "Philadelphia Joint Board" se salió de su hotel y ahora queda claro que UNITE HERE es su unión. Todos los miembros que trabajan en los hoteles con unión en Philadelphia son parte de UNITE HERE.*

*Estaremos unidos para construir una unión más fuerte.*

*Estaremos unidos para justicia.*





PHILADELPHIA JOINT BOARD

An SEIU Affiliate

22 South 22<sup>nd</sup> Street  
Philadelphia, PA 19103

215-751-9770  
215-751-0513 (fax)

Mildred Saldan  
Secretary-Treasurer

Richard Fittingoff  
President

Local 33T ■ Local 75 ■ Local 148C ■ Local 170 ■ Local 274 ■ Local 352 ■ Local 525 ■ Local 634 ■ Local 2224

December 21, 2010

Dear Banquet Extra:

Please be advised that, effective January 1, 2011, Local 274 of the Philadelphia Joint Board, Workers United, will no longer be handling the referral of banquet servers and bartenders to the hotels.

We have advised the Crowne Plaza, the Holiday Inn Historic District, the Sheraton Philadelphia City Center, and the Sheraton University City, in writing, to call you directly.

It was a pleasure working with you over these past years. If we can ever be of any assistance, please do not hesitate to contact us.

Sincerely,

Lynne P. Fox  
Manager

LPF/amz

Cc: Richard A. Minter, Chief of Staff, Philadelphia Joint Board  
Shirley Schingen, Servicing Representative/Organizer, Philadelphia Joint Board

## LABOR RELATIONS

intent to cause such interference.<sup>6</sup>

In the absence of fraud or bad faith on the part of an international union in ruling on an appeal from the vote of the general membership of a local expelling plaintiff, the international union is not liable to the member even if its decision in affirmance of the expulsion was erroneous.<sup>7</sup>

### § 960 Inducing breach of contract

## Research References

West's Key Number Digest, Labor and Employment ☞1973

A union may be liable for malicious and intentional interference with the business and contractual relations of another.

A union may be liable for malicious and intentional interference with the business and contractual relations of another.<sup>1</sup>

A union is not per se liable, however, for inducing others to break contracts with an employer.<sup>2</sup> Under the federal statute which provides that any money judgment against a union shall be enforceable only against it as an entity and against its assets and not against any individual member or his assets,<sup>3</sup> where a union as an entity is subject to liability for the damages occasioned by a breach of its collective bargaining agreement, its officers

N.E.2d 742 (1958).

Wash.—*Titus v. Tacoma Smeltermen's Union Local No. 25*, 62 Wash. 2d 461, 383 P.2d 504 (1963).  
N.Y.—*Ehrlich v. Maggiore*, 24 A.D.2d 947, 265 N.Y.S.2d 418 (1st Dep't 1965).

## [Section 960]

U.S.—*Lewis v. Pennington*, 257 F. Supp. 815 (E.D. Tenn. 1966), judgment aff'd in part, rev'd in part on other grounds, 400 F.2d 806, 12 Fed. R. Serv. 2d 1141 (6th Cir. 1968).

La.—*New Orleans Opera Guild, Inc. v. Local 74 Musicians Mut. Protective Union*, 242 La. 134, 134 So.2d 901 (1961).

As to liability of members, see §§ 952 and 953.

U.S.—*Wilson & Co. v. United Packinghouse Workers of America*, 181 F. Supp. 809 (N.D. Iowa

should not be held to be individually liable for the inducement of such breach.<sup>4</sup>

### B. ACTIONS BY OR AGAINST UNIONS OR MEMBERS IN GENERAL

## Research References

*A.L.R. Library*

A.L.R. Index, Federal Railway Labor Act; Labor and Employment; Labor-Management Reporting and Disclosure Act; Labor Management Relations Act; National Labor Relations Act; National Labor Relations Board; Railway Labor Act; Unfair Labor Practices West's A.L.R. Digest, Labor and Employment ☞1977 to 1989

#### 1. Right of Action

### § 961 Generally

## Research References

West's Key Number Digest, Labor and Employment ☞1977

As a general rule, labor organizations may sue and be sued.

Labor unions are "legal entities" for purpose of suing or being sued.<sup>1</sup>

Under the National Labor Relations Act, any labor organization which represents employees in an industry affecting commerce may sue or be sued as an entity and in behalf of the employees whom it

1960).

Actions for breach of contract, generally, see §§ 991 to 1002.

## [Section 961]

Mass.—*Diluzio v. United Elec., Radio and Mach. Workers of America, Local 274*, 386 Mass. 314, 435 N.E.2d 1027 (1982).

N.C.—*Martin v. Local 71, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO*, 248 N.C. 409, 103 S.E.2d 462 (1958).

S.C.—*Hall v. Walters*, 226 S.C. 430, 85 S.E.2d 729 (1955).

**Building and construction trades council held to be labor organization**

Kan.—*R. D. Andersen Const. Co., Inc. v. City of Topeka*, 228 Kan. 73, 612 P.2d 595 (1980).

# WHY I AM NOT AN EMPLOYEE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

COURT PAGE 3

ANSWER  
#0

Joseph DiGenova

Plaintiff

v.

Lynne Fox

Defendant

Civil Action No. 09-CV-267

## **DEFENDANT LYNNE FOX'S STATEMENT OF MATERIAL FACTS AS TO WHICH NO GENUINE ISSUE EXISTS**

Defendant Lynn Fox hereby submits the following statement of material facts as to which no genuine issue exists:

1. At all times relevant to the facts alleged in Plaintiff's Complaint Defendant Lynne Fox ("Fox" or "Defendant") was the Manager of the Philadelphia Joint Board of UNITE HERE. (Affidavit of Lynne Fox at ¶ 1, attached as Ex. 1).
  
2. UNITE HERE Local 274 ("Union" or "Local 274") was and is an unincorporated association and labor organization with offices located at 22 S. 22d Street, Philadelphia, PA 19103. Local 274 is a constituent member of the Philadelphia Joint Board of UNITE HERE. (*Id.*)

9. The Union runs a hiring hall for banquet extras. (Schingen Affidavit at ¶ 5). Hotels use the hiring hall on a voluntary basis. (Schingen Affidavit at ¶ 6).

10. The Union maintains three lists for "banquet extras," the "A" list, the "B" list, and the "C" list. (Schingen Affidavit at ¶ 7). There are 11 members on the A list, and 15 on the B list. The C list has no limitation as far as how many are on the list. (*Id.*)

11. If a hotel calls for a banquet extra, the work is first offered to the A list on a rotating basis, then the B list, and then the C list. (Schingen Affidavit at ¶ 8). If a banquet extra on the A or B list turns down a certain number of jobs, he or she can be removed from the list. (*Id.*)

12. Under the hiring hall rules, an employer has the right to "bar" any individual booked from the Union from working at their establishment,

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13. Full-time and preferred list servers are covered by the collective bargaining agreements in place between the respective hotels and the Union. (Schingen Affidavit at ¶ 10). Banquet extras are not covered by the collective bargaining agreements. (*Id.*) If an employer "bans" an on-call server from its property, neither the Union nor the banned server has recourse to the grievance and arbitration clause of the collective bargaining agreement. (*Id.*)

14. Joe DiGenova is a banquet extra on the A list. Joe has been barred by several hotels, and at present can only be sent to a few hotels. (Schingen Affidavit at ¶ 10; copies of the letters banning DiGenova are attached as Ex 5. )

15. DiGenova has had a long history of complaints against the Union. (Dep. 66).

16. For example, DiGenova has filed internal union charges against Shirley Schingen, (Dep. 59), has filed unfair labor practice charges against the Union (Dep. 51), and filed a duty of fair representation lawsuit against the Union in 2002.

09-267

CIVIL

SOPH  
DiGENOVA

VS

FOX

~~JOHN~~ ~~JOHN~~

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**U.S. Department of Justice**

*United States Attorney*

*Eastern District of Pennsylvania*

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*615 Chestnut Street  
Suite 1250  
Philadelphia, Pennsylvania 19106-4476  
(215) 861-8200*

March 14, 2014

Joseph DiGenova  
827 S. 49<sup>th</sup> Street  
Philadelphia, PA 19143

RE: Your Citizens Report of March 14, 2014

Dear Mr. DiGenova:

This office has received your Citizens Report of March 14, 2014 regarding fraudulent work lists at your Union. Please be advised that the United States Attorney's Office is responsible for the prosecution of persons accused of violating federal laws and for representing various officers and agencies of the federal government in civil actions. Accordingly, this office can only undertake those cases falling within federal jurisdiction as described above. We do not represent private citizens and we cannot give legal advice to private citizens.

We have reviewed your letter and determined that we are not the appropriate office to contact. We suggest you report this new information to the Department of Labor, Philadelphia Regional Office, 150 S. Independence Mall West, Suite 1072, Philadelphia, PA, telephone 215-446-3755.

Very truly yours,

The United States Attorney's Office



U.S. Department of Justice  
United States Attorney's office  
Eastern District of Pennsylvania

615 Chestnut Street  
Suite 1250  
Philadelphia, Pennsylvania 19106-4476  
(215) 861-8200

MAR 11 A  
1031

US DEPT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
EASTERN DISTRICT OF PENNSYLVANIA

## CITIZEN REPORT FORM

The United States Attorney's Office is responsible for the prosecution of persons accused of violating federal laws and for representing various officers and agencies of the federal government in civil actions. Accordingly, our office can only undertake those cases falling within federal jurisdiction as described above.

Name JOSEPH D'GENOVA

Date 3/14/14

Address 827 S 49TH ST  
PHILA PA 19143

Who referred you to this office?

NATURE OF CRIME  
FRAUDULENT WORK LISTS

Telephone # 215-280-2542

Do you have an attorney representing you in this matter? Yes  No \_\_\_\_\_

If so, name and address

JEFF HOYLE

Have you ever completed a report or provided information to this office before?  
Yes  No \_\_\_\_\_ If so, when? 2007

List all public agencies you have contacted regarding this matter.

When: 1072 S WINE JOHN SPRATLY

What was the result:

WORKING ON NOW

Is there a court action pending? Yes  No   
If so, where?

JEFF HOYLE

1100 W PROVIDENCE  
MEDIA PA 19063

610-

Briefly describe your issue or information. Use the reverse side of this form if necessary. If you have any relevant documents, please have copies available to attach.

WE JUST FOUND FRAUD WORK LISTS ON 3/12/14  
AT OUR UNION CONCERNIN' WORK LIST AT  
SHERATON UNIVERSITY CITY 2 HOLIDAY INN  
INDEPENDENCE MALL PASSED ON TO 3RD PART,  
WYNDHAM HOTEL NOW FROM PHILA JOINT  
BOARD LYNN FOX MANAGER

WE DO NOT KNOW WHEN BENEFITS WERE MADE.  
TIM O'TOOLE UNION REP. FOR BANQ. SERVERS  
AT HOTELS. HE IS ALSO SHOP STEWARD AT  
RADISSON WARWICK HOTEL IN 2009 & 2010  
WHEN EVENTS TOOK PLACE

HE WAS DIRECTLY TOLD BY SHIRLEY  
SCHENGING & MIKE DRAPER, BOOKING AGENT  
AND UNION REPRESENTATIVE, RESPECTIVELY, NOT  
TO REPRESENT BANQ. SERVERS INTEREST  
AT WARWICK HOTEL.

TIM O'TOOLE IS NOT ALLOWED TO MAKE  
STATEMENT ABOUT THIS ISSUE UNLESS  
ARRANGED BY LEGAL LABOR ENTITY  
ACCORDING TO MIKE MULLENS

WE REQUEST A MEETING WITH THIS OFFICE  
FOR JOSEPH DiGENOVA, ROSLYN WICHINICH  
PRESIDENT OF UNITE HERE LOCAL 274, TIM  
O'TOOLE UNION REP. MIKE PIRO, SENIOR  
BENEFITS ADVISOR, US DEPT LABOR PENSIONS  
SOON AS POSSIBLE THANK YOU 3/14/11  
Joseph DiGenova

**mmcbride**

**From:** mmcbride  
**Sent:** Friday, January 11, 2013 3:55 PM  
**To:** Colleen Gordon  
**Subject:** RE: Preferred Servers

Hi Colleen,

Thank you for the list you sent but I also need the list of your chain gang.

Thank you,

Marge

---

**From:** Colleen Gordon [colleen.gordon@ihg.com]

**Sent:** Friday, January 11, 2013 8:48 AM

**To:** mmcbride; June Seminario; Mason Whitehill

**Subject:** Preferred Servers

Steve Quiroli  
Kathy Quiròli  
Ed Greene  
Helen Hart  
Christopher Moore  
Diane Riper

--  
**Colleen Ann Gordon**  
Food & Beverage Manager  
Holiday Inn Historic District Philadelphia  
400 Arch Street, Philadelphia, PA 19106  
P: 267-765-3320 | F: 267-765-3391 | E-mail: [colleen.gordon@ihg.com](mailto:colleen.gordon@ihg.com)

OUR UNION HAD OVER 1 YR NEVER  
TOLD ANYONE UNTIL I FOUND OUT

FORWARD LIST FOR BANQUET SERVERS - ISSUED BY  
HOLIDAY INN HISTORIC DISTRICT, JANUARY 11 2013  
TO 3RD PARTY. 8:48 AM

TO MARGE MCBRIDE

BOOKING AGENT LOCAL 274 & 54 UNITE HERE  
FOR PREFERRED SERVERS

STEVE QUIROLI } DID NOT RECEIVE WORK FROM HOTEL  
KATHY QUIROLI } DID NOT KNOW THEY WERE PUT ON  
HELEN HART ) ANY LIST

DID RECEIVE WORK

DID NOT KNOW SHE WAS ON PREFERRED LIST

THERE WAS NO HIRING FOR ANY LIST AT  
HOLIDAY INN HISTORIC DISTRICT 4TH & ARCH  
THAT A LIST WAS ASKED TO APPLY FOR UNDER  
RICHARD MINTER, SHIRLEY SCHENGAN, LYNN FOX  
THE UNION GAVE JOSEPH DiGENOVA THE  
LIST AFTER LEARNING FROM KATHY & STEVE

PAGE 3 COURT

Case 2:15-cv-04143-MMB Document 3 Filed 08/11/15 Page 24 of 29

ANSWER # 7  
# 25,  
# 27  
UNITE HERE Local 274 (Wyndham Hotel)  
Case 04-CB-141853  
PHILA HUMAN  
RELATIONS  
COMMISSION  
Confidential Witness Affidavit

I, JOSEPH DiGENOVA, being first duly sworn upon my oath, state as follows:

I have been given assurances by an agent of the National Labor Relations Board (NLRB) that this Confidential Witness Affidavit will be considered a confidential law enforcement record by the NLRB and will not be disclosed unless it becomes necessary to produce this Confidential Witness Affidavit in connection with a formal proceeding.

I reside at 827 S. 49<sup>th</sup> Street, Philadelphia, PA 19143

My cell phone number (including area code) is 215-280-2542

*ON THE A LIST JCO*  
I am a banquet server ~~and member~~ of UNITE HERE Local 274 (Union). The Union runs a hiring hall out of its 421 N. 7<sup>th</sup> Street, Philadelphia, PA location. The Union maintains *HAS* Hiring Hall Rules and Procedures for Banquet Servers. *THAT IT ~~HAS~~ NOT FOLLOWED* *JCO*

I have not worked a banquet job at the Holiday Inn Historic District located at 4<sup>th</sup> and Arch Street, Philadelphia, PA since 2012. I have worked two separate jobs at Senasta at 18<sup>th</sup> & Market in September 2014.

In January 2013, I received a copy of the Union's hiring hall banquet list. I provided a copy of this list to the Board Agent in prior Case 04-CB-129301. On the list it states that I can only work at the 4<sup>th</sup> Street location. The term 4<sup>th</sup> Street referred to the Holiday Inn at 4<sup>th</sup> & Arch Streets.

Sometime in 2013, Wyndham Philadelphia Historic District took over the 4<sup>th</sup> and Arch Street hotel and banquet facility.

COURT PAGE 3

JCO

On or about September 3, I went in to the Union hall to find out who the new booking agent was because I had heard that Marge McBride was no longer the booking agent. When I arrived, I spoke to Derek Pettaway who was sitting at the front desk. It is my understanding that he is the new booking agent at the hiring hall and he maintains the hiring hall list on the computer. I asked Pettaway to look up and tell me where I was not allowed to work. He told me I was not allowed to work at 36<sup>th</sup> Street (the Sheraton). I agreed and told him that I did not want to work there. He told me I was not allowed to work at the 17<sup>th</sup> Street location (also a Sheraton). I told him that I also did not want to work there. I am also not allowed to work at the 10<sup>th</sup> & Packer location (the Holiday Inn). I told him I also didn't want to work there. He told me that I was allowed to work at Senasta at 18<sup>th</sup> & Market. Pettaway told me that I was not working at 4<sup>th</sup> & Arch because it said in the computer that I did not want to work there. I told him that was incorrect. Pettaway told me he would correct that in the computer. Pettaway told me he had nothing to do with the entry in the computer. I told Pettaway that I wanted a meeting with Michael Mullins and Tim O'Toole to straighten out this confusion because I never said I did not want to work at the 4<sup>th</sup> & Arch location. I left the Union hall.

That same day, I sent a text message to O'Toole and told him that the "A" list members— Steve and Kathy Quroli, Helen Hart, and I wanted to be placed on the agenda for the September Executive Board meeting. I reminded him that we asked to meet last year but never heard back from him. I told him that the issue is 4<sup>th</sup> & Arch, Stadium Holiday Inn, and 36<sup>th</sup> Street. I resent the same text to O'Toole on Friday, September 5. I did not receive a response.

September 18, 2014, I went back to the Union hall. I asked Pettaway if Michael Mullins was around. Pettaway told me that Mullins wasn't in. I asked Pettaway, "Who's going to call the cops? You or I?" He said, "Do what you got to do." I called 911. I told them it was a non-

JCD

emergency and told them it was about computer tampering at the union hall. I gave the operator the address. The operator told me somebody would come out. About twenty minutes later, an officer showed up at the union hall. Pettaway brought up the screen on computer to show where Marge McBride made the notation in the computer about me not wanting to work at 4<sup>th</sup> & Arch. I was able to view the screen, but do not recall what it said. I do not recall if the screen showed that Pettaway had made the change to state that I do want to work at 4<sup>th</sup> and Arch.

The police officer asked for a print out of the computer screen, but Pettaway told him he was unable to provide a copy. I provided the Board Agent with a copy of the police report.

CATHCART ~ EO

The Vice President of the Union, Kathy Christiani walked in. ~~I asked her where Mike~~  
~~Mullins was.~~ She said that they would get back to me. I told her we wanted to speak with the Executive Board. Again, Christiani stated that they would get back to me. I then left the Union hall.

I have not heard back from anyone at the Union hall since September 18.

✓ I am not aware of any jobs I may have missed because of the incorrect information in the Union's computer regarding my being sent out to work at the 4<sup>th</sup> & Arch location. I intend to make a written request for information to the union asking to see the Union's list of Employer's requesting banquet servers and who was sent out to those jobs from the referral list.

I am being provided a copy of this Confidential Witness Affidavit for my review. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

SCD

I have read this Confidential Witness Affidavit consisting of 4 pages, including this page, I fully understand it, and I state under penalty of perjury that it is true and correct. However, if after reviewing this affidavit again, I remember anything else that is important or I wish to make any changes, I will immediately notify the Board agent.

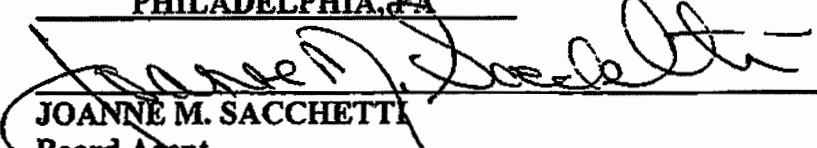
Date: December 8, 2014

Signature:

  
JOSEPH DIGENOV

Signed and sworn to before me on DECEMBER 8, 2014 at

PHILADELPHIA, PA

  
JOANNE M. SACCHETTI  
Board Agent  
National Labor Relations Board

**Privacy Act Statement**

The NLRB is asking you for the information on this form on the authority of the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the NLRB in processing representation and/or unfair labor practice cases and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). Additional information about these uses is available at the NLRB website, [www.nlrb.gov](http://www.nlrb.gov). Providing this information to the NLRB is voluntary. However, if you do not provide the information, the NLRB may refuse to continue processing an unfair labor practice or representation case, or may issue you a subpoena and seek enforcement of the subpoena in federal court.

JCD

Joseph C. DiGenova v. Unite Here Local 274

PCHR DOCKET NO. #E14126607 EEOC DOCKET NO. #17G-2015-00065C

Page \_\_\_\_ of \_\_\_\_

COURT PAGE 3

**Without knowledge or information sufficient to form a belief.** I do not have enough information to either agree or disagree with what Respondent said.

**Paragraph # 19 :**

**Admitted.** I completely agree with what Respondent said and have nothing more to add.  
 **Admitted in part.** I agree with what Respondent said but want to add the following:

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**Denied.** I completely disagree with what Respondent said and having nothing more to add. Everything I have to say on this issue is stated in the complaint.

**Denied in part.** I disagree with what Respondent said because:

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**Without knowledge or information sufficient to form a belief.** I do not have enough information to either agree or disagree with what Respondent said.

**Paragraph #20 :**

**Admitted.** I completely agree with what Respondent said and have nothing more to add.  
 **Admitted in part.** I agree with what Respondent said but want to add the following:

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**Denied.** I completely disagree with what Respondent said and having nothing more to add. Everything I have to say on this issue is stated in the complaint.

**Denied in part.** I disagree with what Respondent said because:

HIRING HALL RULES SPELL IT OUT  
THERE HAS BEEN NO TRAINING BY UNION /  
OR EMPLOYER EVER.

**Without knowledge or information sufficient to form a belief.** I do not have enough information to either agree or disagree with what Respondent said.

**Paragraph # 21 :**

**Admitted.** I completely agree with what Respondent said and have nothing more to add.  
 **Admitted in part.** I agree with what Respondent said but want to add the following:

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Joseph C. DiGenova v. Unite Here Local 274

PCHR DOCKET No. # E14126607 EEOC DOCKET No. # 17G-2015-00065C

Page \_\_\_\_ of \_\_\_\_

COURT

PAGE 3

**Denied.** I completely disagree with what Respondent said and having nothing more to add. Everything I have to say on this issue is stated in the complaint.

**Denied in part.** I disagree with what Respondent said because:

I TOLD MULLINS I WAS REPORTING ACTION  
HE GAVE ME FRAUD LIST

I AM ENCLOSED REPORT

**Without knowledge or information sufficient to form a belief.** I do not have enough information to either agree or disagree with what Respondent said.

**Paragraph # 22 :**

**Admitted.** I completely agree with what Respondent said and have nothing more to add.

**Admitted in part.** I agree with what Respondent said but want to add the following:

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**Denied.** I completely disagree with what Respondent said and having nothing more to add. Everything I have to say on this issue is stated in the complaint.

**Denied in part.** I disagree with what Respondent said because:

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**Without knowledge or information sufficient to form a belief.** I do not have enough information to either agree or disagree with what Respondent said

**Paragraph # 23 :**

**Admitted.** I completely agree with what Respondent said and have nothing more to add.

**Admitted in part.** I agree with what Respondent said but want to add the following:

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**Denied.** I completely disagree with what Respondent said and having nothing more to add. Everything I have to say on this issue is stated in the complaint.

**Denied in part.** I disagree with what Respondent said because:

TIM O'TOOLE CAME TO MY HOME

HE CAN VAILIFY MEETING WAS TO TAKE PLACE  
I HAVE TEXT MESSAGES

**Without knowledge or information sufficient to form a belief.** I do not have enough information to either agree or disagree with what Respondent said.